



November 9, 2016

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Via Electronic Filing
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

EX PARTE LETTER RE: WC Docket No. 05-25, RM-10593

Dear Secretary Dortch:

On November 7, 2016, Sheba Chacko, Head of Americas Regulation, BT Americas Inc. ("BT") e-mailed Claude Aiken, legal advisor to Commissioner Clyburn, the following about how the Commission should set the Price Guideline Index:

The PGI would be set based on a weighted average of ILEC prices for PBDS at or below 50 Mbps ("Low-Bandwidth PBDS"). In order to establish the weighted average, each ILEC would need [to] set the prices and volumes attributed to the services. First, to establish the current prices, the ILECs would file with the Commission either the prices they charge their five largest wholesale and their five largest retail customers as of October 1, 2016 or the weighted average of all of their actual prices as of October 1, 2016 (each ILEC would choose which approach it prefers). The current prices would then be reduced by 19.7% (which was the average amount by which ILECs reduced the prices of their BDS services in response to competition).^[1] Second, the volume of each service would be set based on the volume sold by the ILEC in the prior 12 months. The prices and volumes would then be used to establish an index, i.e., the price guideline index. Each ILEC would be required to post on its website prices for Low-Bandwidth PBDS and a calculation assessing the extent to which the weighted average of those prices is equal to or below the PGI. If the weighted average of ILEC's prices for Low-Bandwidth PBDS is at or below the PGI, a party challenging the lawfulness of any such prices would bear the burden of proof. If an ILEC's prices for Low-Bandwidth PBDS is above the PGI, the ILEC would bear the burden of proof where the lawfulness of any of those prices is challenged. Going forward, the Commission would apply the same annual X factor to the PGI that it applies to the PCI for TDM services.

This improvement to the complaint process that the Commission would make for Low-Bandwidth PBDS would be in addition to other improvements to the complaint process contained in the order which collectively would make it easier for purchasers to prove that Ethernet-based BDS rates are unjust and unreasonable. However, such improvements to the complaint process would not foreclose ex ante regulation of Ethernet-based BDS which market the Commission would continue to study by gathering data at regular intervals and analyzing such data.

If you have any questions regarding any matters discussed herein please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'SChacko'.

Sheba Chacko
Head, Americas Regulation and Global Telecoms Policy, BT

cc:
Claude Aiken

^[i] See Declaration of Jonathan B. Baker on Market Power in the Provision of Dedicated (Special Access) Services, attached to Letter from Jonathan B. Baker to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593, ¶ 63 (filed Jan. 27, 2016) (refiled Apr. 14, 2016) (“Baker Decl.”)